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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,472	10/23/2003	Steven J. Brattesani	15783.1 (ZEE6077.01A1)	9114
8156	7590	02/10/2006	EXAMINER	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			BROWN, MICHAEL A	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/692,472	BRATTESANI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Brown	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/23/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 9, 11-12 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Feng.

Feng discloses in figures 1-5 a hand-held integrated remote control and massage device comprising a housing 10 including a massage surface 33, a remote control input interface 40, at least one motor (col. 2, lines 17-20), the input interface includes buttons (fig. 1), the housing includes a grip-able portion including ribs (rib 31 on one end and the other rib on the opposite end not numbered), a switch 102 for activating the motor, the housing is sealed (by 30) and includes a chamber (the circuit and power source are inside of a chamber in the device).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng in view of Moriyasu.

Feng discloses in figures 1-5 a hand-held integrated remote control and massage device, substantially as claimed. However, Feng doesn't disclose the input interface including a light source and a touch screen. Moriyasu teaches in figure 13A a remote control input comprising at least one light source and a touch screen (col. 11, line 41). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the touch screen and the light source as taught by Moriyasu could be incorporated into the device disclosed by Feng. The light source would be used to locate the device in the dark. The touch screen would be substituted for the buttons because both are functionally equivalent.

Claims 7-8 10, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng in view of Trivett.

Feng discloses in figures 1-5 a hand-held remote control, device as set forth above. However, Feng doesn't disclose the device having a locator, a receiver, a speaker, a flashing light or a rechargeable battery. Trivett teaches in figures 1-5 a remote control locator system comprising a device locator 10, having a receiver 30 that includes a speaker 40 and batteries. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the locator, receiver, speaker, flashing light and rechargeable batteries as taught by Trivett could be incorporated into the device disclosed by Feng. The locator would be used to locate the device. The receiver would be used to receive a signal from an electronic device. The speaker would be used to give off a sound and the batteries would be substituted for the

batteries disclosed by Feng. Trivett teaches making a remote control device of plastic (col. 2, lines 65-66). The flashing light provides a flash light within the housing.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng in view of Moriyasu, along with Diamond (CA '780).

Feng discloses in figures 1-5 a hand-held remote control device, substantially as claimed. However, Feng doesn't disclose the massaging surface being removable or a heating element in the massage surface. Moriyasu teaches changing the location and number of vibrators in a housing (col. 3, lines 39-41). Diamond teaches using a heating element that includes infra-red (page 11, lines 25-26). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the massaging surfaces disclosed by Feng could be removable as taught by Moriyasu. Thus, making it possible to replace a damaged massaging surface. The heating element as taught by Diamond would be used to provide heat to the user's body.

Claims 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng in view of McDermott, along with Trivett.

Feng discloses in figures 1-5 a hand-held remote control device, substantially as claimed. However, Feng doesn't disclose a flashlight including LEDs. McDermott teaches in figures 17-19 a flashlight 20 including LEDs 63. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the flashlight having LEDs as taught by McDermott could be substituted for the flashing light as taught by Trivett in order to use the LEDs to control the flashing of the light.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng in view of Schettino.

Feng discloses in figures 1-5 a hand-held remote control device, substantially as claimed. However, Feng doesn't disclose a sound recorder at least partially enclosed with the housing. Schettino teaches in figure 1 a pillow alarm comprising a housing 11 having a sound recorder 20 inside of the housing. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the sound recording device as taught by Schettino could be placed inside of the housing disclosed by Feng in order to be able to have the sound producing device within the housing. It is old and well known that a sound recording device can be a cassette tape or a disc and the sound recorder is controlled by a switch.

### ***Response to Arguments***

Applicant's arguments filed November 18, 2005 have been fully considered but they are not persuasive. Applicant argues that Feng doesn't provide a remote control input interface for enabling a user to control at least one electronic entertainment device. However, Feng clearly discloses a remote control unit as Applicant has agreed in the arguments. Thus, the issue is what is the remote control unit used to control. Applicant argues that the control unit in Feng is used to switch between an audio control mode in which strength of oscillations of a massager is controlled by an audio signal input through an audio input jack and an internal signal control mode. The first thing that must be noted is that Applicant is only positively claiming a remote control input interface. Applicant hasn't positively claimed the electronic entertainment device. Also

because the term electronic entertainment device is so broad, the controlling of the audio control mode can be interpreted as controlling an electronic entertainment device. Clearly the device disclosed by Feng is electronic and it used to provide a form of entertainment (massaging is a form of entertainment). Applicant argues that there is no motivation to combine Feng and Moriyasu. However, Feng was used to set forth the environment of a hand-held integrated remote control and massage device. Moriyasu was used to provide a teaching of a light source and a touch screen. The light source could be used to provide light or an indicator and the touch screen could be used as a source of controlling the device. Applicant argues that there is no motivation to incorporate a light source because the control box is tethered to the apparatus. However, the light source could be used to locate the entire device in a dark room or a dark setting. Applicant argues that Trivett doesn't disclose a flashlight or a grippable portion comprising at least one plastic or thermoplastic elastomer or a rechargeable battery. However, Feng was used to set forth the environment of a hand-held integrated remote control and massage device. Trivett was used to provide a teaching of a flashlight (flashing light is being interpreted as a flashlight because it provides a light). The device is made of plastic (col. 2, lines 65-66) and any portion thereof is grippable. The batteries as taught by Trivett are rechargeable. Applicant argues that there is no motivation to incorporate a locator into Feng. However, a locator is always provides a convenience when it comes to finding any object, whether it is lost, misplaced or stored some where. Applicant argues that Moriyasu doesn't disclose removable massage attachments. However, Moriyasu was used to provide a teaching

of changing the locations and number of vibrators. The examiner interprets this as being able to remove the massaging attachment. The only way to change the locations is to remove the massaging devices. Applicant argues that there is no motivation to combine the flashlight of McDermott with the remote control device of Feng. However, McDermott was used as a modifier to provide a teaching of combining a flashlight with an LED. The flashlight with the LED was substituted for the flashlight (flashing light), as taught by Trivett in order to have a light that remain on constantly versus one that remain on for short periods of time. Applicant argues that there is no motivation to place the recorder as taught by Schettion within the housing disclosed by Feng. However, as set forth above, Feng discloses a hand-held massaging device. Schettion was used as a modifier to provide a teaching of placing a recorder inside of a housing.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

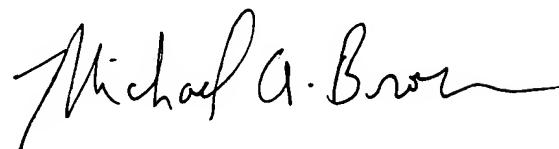


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown  
January 26, 2006

A handwritten signature in black ink that reads "Michael A. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**